COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

In re Petition of Verizon New England Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*	Docket No. 04-33

AT&T COMMUNICATIONS OF NEW ENGLAND, INC.'S RESPONSE TO VERIZON'S MOTION TO HOLD PROCEEDING IN ABEYANCE

Introduction

AT&T Communications of New England (AT&T) seeks leave to respond briefly to Verizon Massachusetts' ("Verizon's") Reply in Support of Motion to Hold Proceeding In Abeyance ("Verizon Reply").[1] This response is necessary because Verizon's Reply misstates and distorts AT&T's positions, and because Verizon's legal conclusions concerning its rights and obligations should *USTA II* take effect are simply wrong. As discussed below, the stand still order recommended by AT&T and other CLECs is needed to ensure that Massachusetts consumers will continue to receive the benefits of local exchange competition until the

[1] Although Verizon MA's Reply was submitted to the Department on May 21, 2004, it was not served on the parties until May 27, 2004, hence the short delay in AT&T's submission of this Response.

Department itself resolves the issues of law and fact that are in dispute between Verizon and other carriers.[2]

Argument

I. THE DEPARTMENT CAN AND SHOULD ACT TO PRESERVE THE STATUS QUO.

At the heart of Verizon's argument is a simple misstatement of AT&T's position. Verizon argues that the Department should "reject the CLECs' request to take the unlawful step of issuing a blanket determination that Verizon MA must continue to offer existing UNE arrangements **regardless of what particular contracts or the federal courts may say**." Verizon Reply, p.3 (emphasis added). Verizon's characterization of the CLEC position is simply wrong. CLECs have not asked the Department to compel Verizon to continue to provision UNEs "*regardless"* of the parties legal and contractual rights. Instead, CLECs have strongly disputed Verizon's interpretation of what those rights *are*, under all sources of "applicable law." Having disputed these issues and briefed many of them to the Department in Docket 03-60 in AT&T's Emergency Motion for an Order to Protect Consumers By Preserving Local Exchange Market Stability, AT&T has asked the Department to preserve the status quo by requiring Verizon to offer existing UNE arrangements until this Department determines what the parties' rights are under applicable law. A stand-still order will preserve the Department's own jurisdiction and authority by ensuring that the Department, and not Verizon, will determine the parties' rights under applicable law.

[2] Separate and apart from AT&T's request in this proceeding that the Department grant Verizon's pending motion to hold this proceeding in abeyance subject to the conditions discussed further in this response, on Friday, May 28, 2004, AT&T filed a separate emergency motion in Docket 03-60 seeking a broader standstill order to preserve the (continued...)

Moreover, Verizon's threat to act on its unilateral interpretation of the law poses very real risks that consumers receiving services or seeking to receive services from Verizon's competitors, will be injured as Verizon refuses to provide service, refuses to provide service at existing rates (which can amount to the same thing as refusing to provide service at all), or refuses to continue to meet its obligations to provide non-discriminatory treatment to CLECs and their customers. Verizon's Response explicitly threatens these potentially devastating actions. It argues that it should not be required to continue providing "all existing unbundled network element … arrangements at existing prices" pending arbitration because if *USTA II* were to take effect then Verizon would no longer have "any legal obligation" to do so. Verizon Reply, pp. 2-3. Verizon asserts that when the *USTA II* decision becomes effective it intends to pursue unilaterally "any rights Verizon may have to cease providing UNEs and to transition CLECs to alternatives to UNEs." Verizon Reply, p.4. In sum, it has become evident that Verizon intends to act unilaterally upon its own notion of its rights should a mandate in the *USTA II* case become effective. A stand still order will insure that competition and consumers are protected until the Department resolves the disputed issues of law and fact.

Verizon's legal arguments against the relief CLECs have sought are circular. Its claims regarding its purported right to deny CLECs the continued ability to serve Massachusetts consumers on the basis of UNE-P would be valid only if *all* of Verizon's substantive and

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(continued...)

status quo so that the Department has the ability to resolve any legal and policy issues that may arise if the D.C. Circuit's *USTA II* decision were to take effect.

procedural assertions are found to be valid. But those assertions are not valid merely because Verizon says they are. Thus, for example, Verizon asserts that if the USTA II stay ends it will "no longer ha[ve] any legal obligation to provide" certain UNEs and a stand-still order would effectively "stay an order of the U.S. Court of Appeals." Verizon Reply, pp. 1-2. That is certainly Verizon's position, but the Department has before it substantial arguments contesting the assertion (on numerous grounds) that *USTA II*, if it takes effect, will alter Verizon's obligations to continue to provision UNEs.

In contrast, AT&T makes no demand that the Department adopt its substantive views at this juncture. Instead, AT&T asserts that Verizon's obligations are in dispute; that Verizon cannot unilaterally abrogate to itself authority to resolve those disputes; that this Department has the authority and the responsibility to make the determinations at issue here; and that the Department should issue a stand-still order until *it*, and not Verizon, has decided what Verizon's legal rights and obligations are under applicable law – the Telecommunications Act, state law, the Bell Atlantic/GTE Merger Conditions, and the terms of various interconnection agreements. In short, AT&T is not asking the Department to compel Verizon to provision existing UNE combinations "regardless of what the parties' contracts or the federal courts may say." We are asking the Department to determine what those rights are, but to preserve the status quo until it has done so.

II. AT&T SHOULD NOT INCUR FINANCIAL HARM AS A RESULT OF VERIZON'S DELAY.

Verizon also argues that AT&T and other CLECs are engaged in "gamesmanship" and have made "unreasonable and unlawful demands" because we have only agreed to Verizon's proposed delay of this proceeding for six weeks on the condition that it not subject us to

operational and financial harm in the interim. Verizon Reply, p.2, n.3. In fact, AT&T's response to Verizon's request for a significant delay of the proceeding was quite accommodating. AT&T assented to a delay so long as it does not permit Verizon unilaterally or precipitously to discontinue obligations already owed under the ICAs or to extend the period within which AT&T is unlawfully deprived routine network modifications and EELs.

Verizon's response to AT&T's position with respect to routine network modifications is again built on an assumption that Verizon's view of the law (i.e., that the TRO contains new obligations with respect to routine network modifications) must prevail. The Arbitrator in Rhode Island's TRO Arbitration[3] and the Hearing Examiner in Maine's TRO Arbitration[4] (decisions ignored in Verizon's papers) have already concluded that Verizon's view is wrong. Verizon's continued failure to provide routine network modifications is unlawful. Its twice-rejected claim that the TRO imposes "new obligations" concerning routine network modifications holds no water. Thus, if Verizon wants the benefit of a six-week delay, AT&T cannot be required to forego for yet another six weeks benefits that it should be receiving right this minute. An order mandating that Verizon comply with current law and provide routine network modifications is reasonable and necessary.

Similarly, if Verizon is permitted a substantial delay in the proceedings, AT&T should not, as a result, incur significant financial harm from the commensurate delay in obtaining lower

[3] *In Re: Petition Of Verizon-Rhode Island For Arbitration Of An Amendment To Interconnection Agreements With Competitive Local Exchange Carriers And Commercial Mobile Radio Service Providers In Rhode Island To Implement The Triennial Review Order*, Rhode Island Docket No. 3588, Procedural Arbitration Decision (April 9, 2004), at 10-11.
[4] *Verizon Maine Petition for Consolidated Arbitration*, Maine Docket No. 2004-135, Examiner's Report (May 6, 2004), at 12-13.

EEL rates to which AT&T is entitled under both the TRO and Verizon Mass. DTE Tariff No. 17 ("Tariff 17"). AT&T does not seek a preliminary injunction, as Verizon suggests, rather it wants this proceeding to move forward expeditiously so that it can obtain the relief to which it is clearly entitled. Verizon's request for an abeyance thwarts that objective and AT&T cannot and will not acquiesce to a Verizon delay of the proceeding that will harm AT&T financially. Thus, AT&T's request that Verizon be required to provide EELs according to the *TRO* and its Tariff No. 17 while it delays this proceeding is reasonable.[5]

Conclusion

For the reasons stated above, AT&T does not oppose Verizon's motion to hold the arbitration in abeyance, if (1) Verizon is required to perform routine network modifications and comply with its own tariff provision to accept EEL orders that satisfy eligibility standards specified in the TRO; and (2) the status quo is preserved.

[5] Verizon MA makes much ado about the need for amendment of the ICAs with respect to EELs. AT&T does not dispute that both the Tariff and the ICAs must be amended to incorporate the TRO's new obligations with respect to EELs. AT&T is currently seeking such ICA amendments in this proceeding. The need for amendment, however, does not alter the fact that Verizon MA's attempt to delay the proceeding will cause AT&T harm that can only be cured by Verizon MA immediately providing EELs as required by the TRO even before the inevitable amendments are codified.

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By its attorneys,

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